IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4073 OF 2006

Shri Tryambak Narayan Vidhate .... Petitioner
Vs.
Madhav Chanrabhan Vidhate .... Respondents
& Ors.

Mr. Anil Kumar Patil for the Petitioner

Mr. Tushar N. Sonawane for the Respondent nos. 1 to 3.

CORAM : R.M. SAVANT, J.
DATE : 13TH JUNE, 2007
P.C.

1) Rule with consent of the parties made returnable forthwith.

2) At the outset, Mr. Patil, learned counsel for the petitioner states that his client is prepared to pay the Court fees in terms of the order dtd. 14/2/1998 in Regular Civil Suit No. 351 of 1992 passed by the learned 8th Jt. Civil Judge, Junior Division, Nasik. Mr. Patil further states that he is pressing the petition in so far as the order dtd. 12/10/1998 passed by the learned Civil Judge, Senior Division dismissing the said suit on its transfer to the Court of the Civil Judge, Senior Division, Nasik and the order dtd.

28/11/1998 dismissing the Review Application.

3) It appears that originally the said suit was filed before the Civil Judge, Junior Division, Nasik on the objection raised by the respondent therein, as regards the valuation of the suit, the learned Judge after considering the relief sought came to the conclusion that the Court of learned Civil Judge, Junior Division does not have pecuniary jurisdiction and therefore directed the transfer of the said suit to appropriate Court by obtaining necessary orders from the District Judge. The suit was accordingly transferred to the learned Civil Judge,Senior Division. The said suit appeared on board on 29/9/1998. For non removal of the objection in respect of the Court fees and since the petitioner had not taken steps, the suits came to be dismissed. Thereafter review application filed by the petitioner also came to be dismissed by the order dtd. 28/11/1998.

4) Since the petitioner through his counsel makes a statement that he is prepared to pay Court fees in terms of order dtd. 14/2/1998, in my view it would be just and proper to permit the petitioner to pay court fees, so the dispute between the parties can be finally adjudicated.

5) The learned counsel for the respondent states that the order passed in the year 1998 is sought to be challenged in the year 2007, the said submission is mis-conceived as the petition was initially filed in the year 1999, however, on account of the non removal of objections, it was dismissed and was restored in the year 2006. Therefore, it cannot be said that the order passed in 1998 sought to be challenged in 2007. In that view of the matter, the impugned order dtd. 29/9/1998 passed by the Civil Judge,Senior Division and the order dtd. 28/11/1998 is set aside. The suit is restored to the file of Civil Judge, Senior Division, Nasik. The petitioner undertakes to pay Court fees within four weeks from today.

6) The interest of justice would also require that the petitioner is directed to pay costs of Rs.3,000/- to the respondent within two weeks. The suit to be restored only after the petitioner produces evidence of having paid the said costs to the respondent. In case, the petitioner fails to pay costs as directed herein above, the petition to stand dismissed.

7) Rule is made absolute in the aforesaid terms. Parties to act on an authenticated copy of

the order duly authenticated by the Sheristedar of this Court.

(R.M. SAVANT, J.)